
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

STEPHEN C. ALEXANDER,

Plaintiff,

v.

**BRIDGERLAND TECHNICAL
COLLEGE, ET AL.,**

Defendant.

**MEMORANDUM DECISION
AND ORDER**

Case No. 1:20CV79DAK

Judge Dale A. Kimball

On July 2, 2020, Defendants filed a Motion to Dismiss Plaintiff's Complaint. On August 12, 2020, Plaintiff filed a Motion to Amend Complaint and a Memorandum in Opposition to Defendants' Motion to Dismiss. Defendants have not filed an opposition to the Motion to Amend or a reply memorandum in support of their Motion to Dismiss. However, in an effort to facilitate a timely and appropriate resolution of the competing motions, the court enters the following order.

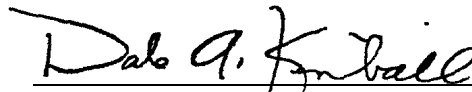
Under Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiff was entitled to file the Amended Complaint as a matter of course within 21 days of Defendant's motion under FRCP 12(b). *See* Fed. R. Civ. P. 15(a)(1)(B). Although Plaintiff received an extension of time to respond to Defendant's motion, the court considers Plaintiff's request to amend as timely. The amendment to Rule 15 allowing a party to amend as a matter of course in response to a motion to dismiss was enacted to prevent overlapping motions to dismiss and motions to amend. The court does not want to address issues that may be moot in light of the Amended Complaint. By

allowing Plaintiff to file this Amended Complaint, the parties and court can then focus on only the issues that may survive amendment. Therefore, Plaintiff's Motion to Amend is GRANTED. Plaintiff shall file the Amended Complaint attached to his motion within ten days of the date of this Order.

Accordingly, the court concludes that Defendant's Motion to Dismiss is moot because it was filed in relation to the original Complaint. Defendant may file a new motion to dismiss in relation to the Amended Complaint within 14 days of the filing of the Amended Complaint, if the alleged grounds for doing so still exist. The court would prefer for the briefing on the motion to dismiss to reflect the operative complaint. Therefore, Defendant's Motion to Dismiss is DENIED AS MOOT.

DATED this 3rd day of September, 2020.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL
United States District Judge